

EVIDENCE — Illegally obtained evidence may be used at trial to impeach defendant's testimony, both on direct examination and on cross-examination.....Revised 3/2010

The State may use evidence which was obtained illegally and which is inadmissible in the State's case in chief to impeach the defendant's testimony on direct examination. *United States v. Havens*, 446 U.S. 620, 624 (1980); *Harris v. New York*, 401 U.S. 222, 226 (1971). The policies behind the exclusionary rule must be weighed against competing policies. If the interests safeguarded by the exclusionary rule are outweighed by the need to prevent perjury and ensure the integrity of the trial process, the illegally seized evidence will come in. *Stone v. Powell*, 428 U.S. 465, 488 (1976). The Supreme Court has refused to allow defendants to use the exclusionary rule as a license to perjure themselves. *Havens*, 446 U.S. at 626; *Harris*, 401 U.S. at 226. Excluding illegally-obtained evidence from the government's case-in-chief serves a sufficient deterrence function; it is not necessary to make the evidence unavailable to the government for impeachment purposes. *Havens*, 446 U.S. at 626. Defendants must testify truthfully or suffer the consequences. *Id.*

A defendant's obligation to testify truthfully continues when he is cross-examined. "The defendant's obligation to testify truthfully is fully binding on him when he is cross-examined. His privilege against self-incrimination does not shield him from proper questioning." *Id.* at 627.

Arizona cases also make it clear that a voluntary confession obtained in violation of *Miranda* may be used to impeach a witness. *State v. Huerstel*, 206 Ariz. 93, 107, ¶ 61, 75 P.3d 698, 712 (2003); *State v. Hoskins*, 199 Ariz. 127, 137, ¶ 25, 14 P.3d 997, 1007 (2000); *State v. Walker*, 138 Ariz. 491, 495, 675 P.2d 1310, 1314 (1984) In *State v. Smyers*, 207 Ariz. 314, 318, ¶ 15, 86 P.3d 370, 374 (2004), the Arizona Supreme

Court affirmed earlier cases holding that a defendant who does not testify at trial may not challenge on appeal a trial court's pretrial ruling that his statements would be admissible for impeachment.